Supreme Court, U.S.
FILED
932079 JUN 22 1994
OFFICE OF THE CLERK

NO.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOHN D. AURITI, Pro Se,
Petitioner

versus

HONORABLE VINCENT D. SEGAL
and
ROSEANN BAEHR,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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JOHN D. AURITI, Pro Se
230 Oakland Ave #43
Audubon, NJ 08106
609-547-0198

## QUESTION PRESENTED FOR REVIEW

When a district judge denies a motion for leave to file a proposed amended complaint without considering the sufficiency of the proposed amended complaint, is the sufficiency of the proposed amended complaint *res judicata*?

## STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the Third Circuit, which was dated on March 25, 1994. This petition for certiorari was filed within ninety days of that date, and this Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1). The district court had jurisdiction of this case under 42 U.S.C., Section 1983, and 28 U.S.C., Section 1343.

On October 26, 1992, the petitioner filed an original complaint. The district judge dismissed the complaint. The petitioner moved for reconsideration and leave to file an amended complaint. The district judge denied reconsideration. However, the district judge made no statement concerning

the insufficiency of the proposed amended complaint. In fact, he made no reference to the proposed amended complaint in either his opinion or order. According to the deputy clerk as stated on the civil docket, the district judge did not deny the petitioner's motion for leave to file an amended complaint. The Court of Appeals affirmed.

On October 6, 1993, the petitioner filed his proposed amended complaint as a second original complaint. The district judge dismissed this complaint on the ground of res judicata. However, as stated above, the district judge made no statement as to the insufficiency of the proposed amended complaint, which is now the second original complaint. Furthermore,

in his brief to the Court of Appeals, the attorney for Judge Segal made a specific reference to the district court's "refusal to consider new allegations of fraud and ratification of perjury against Judge Segal." Nevertheless, the Court of Appeals affirmed again. The petitioner now seeks review by this Court.

In Foman v. Davis, 371 U.S. 178, 83 S.Ct. 227 (1962), this Court held that a district judge has an obligation to state his reason for denying a motion for leave to file an amended complaint. The district judge below made no such statement when he denied the petitioner's motion for leave to file an amended complaint. Therefore, there was no res judicata. See Board of Education v. Dowell,

498 U.S. 237, 111 S.Ct. 630 (1991). Nevertheless, the district judge dismissed the petitioner's second original complaint on the ground of res judicata and the Court of Appeals affirmed. Clearly, the Court of Appeals has sanctioned a departure "from the accepted and usual course of judicial proceedings." Therefore, this Court should exercise its power of supervision and reverse the Court of Appeals. See Rule 10 of this Court.

In his opinion denying reconsideration of the petitioner's first original complaint, the district judge stated that the petitioner "failed to shed light on any new facts not already considered by the Court." That statement was false,

and the district judge knew that it was false when he made it! In his amended opinion and order dismissing the petitioner's second original complaint, the district judge stated, "This second complaint is factually and legally indistinct from the plaintiff's original complaint." That statement was false, and the district judge knew that it was false when he made it! Clearly, the Court of Appeals has sanctioned a departure "from the accepted and usual course of judicial proceedings." Therefore, this Court should exercise its power of supervision and reverse the Court of Appeals. See Rule 10 of the Court.

Respectfully submitted,

John D. Auriti, Pro Se

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN D. AURITI, PRO SE, Plaintiff
v.
HONORABLE VINCENT D. SEGAL
AND ROSEANN BAEHR, Defendants

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 92-4437 (JEI)

ORDER DISMISSING ACTION AS FRIVOLOUS

IRENAS, District Judge

Date of Entry: November 5, 1992

Plaintiff, John D. Auriti, Pro Se, brings this action against his former wife, Rosaenn Baher, and the Honorable Vincent D. Segal, a Judge of the New Jersey Superior Court, who has presided in an ongoing divorce proceeding between Mr. Auriti and Ms. Baehr. Plaintiff seeks relief pusuant to 42 U.S.C. Section 1983 and asserts jurisdiction pursuant to 28 U.S.C. Section 1433.

Apparently, Judge Segal has refused to modify a provision of the Final Judgment of Divorce which states that: "Each party waives any all past, present and future rights he or she may have to receive alimony from the other."

Mr. Auriti has moved before the court asking the judge to delete from the judgment the words "and future", but Judge Segal has apparently refused to do so. It is not clear from the complaint whether there is any appeal pending.

The only relief sought in the complaint is a judgment of this Court "vacating" two prior orders of Judge Segal and an award of "costs". It is not clear from the complaint what plaintiff thinks is the legal basis

under state law for his assertion of the right to amend the divorce decree. This complaint is frivolous and an abuse of the federal court system, and the action will be dismissed with prejudice.

Generally, judges enjoy an absolute immunity from a suit for damages based on the performance of their judicial duties. See e.g. Stump v. Sparkman, 435 U.S. 349 (1978). Even injunctive relief is unavailable, except in the most unusual situation where there is a clear cut showing that the plaintiff's constitutional rights have been violated, there is no immediate remedy at law and there is a serious risk of irreparable harm. See Pulliam v. Allen, 466 U.S. 522. A federal court does not

sit as a court of appeals for a state trial court, and a federal court has no power to "vacate" or otherwise enter orders in a state court proceeding. See Untracht v. West Jersey Health System, Civ. No. 92-1559 Slip Op. at 14 (D.N.J. September 10, 1992). Moreover, any time a federal court is asked to intervene in state court proceedings or otherwise modify the results of such proceedings, important concerns of federalism and comity are implicated which require the federal courts to procede with substantial prudence and caution before engaging in such intervention. Pulliam v. Allen, 466 U.S. at 539.

There is nothing in the complaint suggesting that plaintiff has an available remedy under state law,

let alone, that he has been denied some right provided by the constitution or laws of the United States as required to state a claim under Section 1983.

Additionally Section 1983 only provides a remedy for deprivations resulting from state action, so there is no basis whatsoever for a Section 1983 claim against his former wife. See Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982).

Title 28 U.S.C. Section 1915(d) permits a court to dismiss proceedings in forma pauperis which are deemed frivolous or malicious. As noted in Lyszaj v. American Tel. and Tel., 559 F.Supp. 51 (D. Conn. 1983), aff'd, 720 F.2d 672 (2d Cir. 1983): "The law no more permits affluent persons to file frivolous actions than persons

proceeding in forma pauperis.

For the reasons set forth above,

IT IS on this 2nd day of November, 1992,

ORDERED that the within complaint is hereby dismissed without prejudice.

JOSEPH E. IRENAS

U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN D. AURITI, PRO SE, Plaintiff
v.
HONORABLE VINCENT D. SEGAL
and ROSEANN BAEHR, Defendants

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 92-4437

OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

Date of Entry: December 16, 1992

APPEARANCES:
John D. Auriti, Pro Se
230 Oakland Avenue, Apt. 43
Audubon, NJ 08106
Plaintiff

This matter comes before the court upon plaintiff's motion for reconsideration under New Jersey Federal Practice Rule 12(I). Because plaintiff has not presented any additional relevant law or new factual considerations, the motion is denied.

Plaintiff filed this action

on October 26, 1992 under 42 U.S.C. Section 1983 seeking a modification of a Final Judgment of Divorce. Specifically, Auriti sought a modification of Judge Segal's decision which prevented his receipt of alimony from his former wife, Ms. Roseann Baehr. His argument was essentially that in allegedly deciding not to follow certian prior cases Judge Segal's opinion denied him due process of law.

By order dated November 2, 1992, this court dismissed plaintiff's action as frivolous. Auriti v. Segal, et. al., No. 92-4437 (D.N.J. November 2, 1992). In that opinion the court held that there was no legal basis for this federal court to vacate, amend or otherwise attempt to modify

a judgment of a state court.

To have a prior order of the district court vacated or modified upon a motion for reconsideration, a party must come forward with something new or something overlooked by the court in rendering the earlier decision. In a procedurally circumstance, Chief Judge Gerry denied a motion for reconsideration for failure of the plaintiff to "provide the court with any pertinent case law or fact which this court may have overlooked." Egloff v. New Jersey Air Nat. Guard, 684 F.Supp. 1275, 1279 (D.N.J. 1989). See also Maldonado v. Lucca, 636 F.Supp. 621, 630 (D.N.J. 1986); Pelham v. United States, 661 F.Supp. 1063, 1065 (D.N.J. 1987); Lite, N.J. Federal Practice Rules 12, comment 8. Because

plaintiff has failed to present additional case law (or any source of law) specifically relevant to this court's prior decision and has failed to shed light on any new facts not already considered by the Court, plaintiff's motion is denied.

The court acknowledges that in this motion for reconsideration, plaintiff has asserted various arguments assailing the court's decision of November 2, 1992. However, as explained above, Rule 12(I) provides a mechanism to bolster a position previously taken with new facts or law. The Rule does not provide a mechanism for parties to attempt to rebut judicial opinions. Because plaintiff's arguments are simply an attempt to rebut this court's earlier opinion, and not

a good faith effort to inform the court of additional information that should have been considered earlier, this court need not respond to these assertions.

For the reasons set forth above,

IT IS on this 11th day of November, 1992,

ORDERED that the within complaint is hereby DISMISSED.

JOSEPH E. IRENAS

U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-5019

JOHN D. AURITI, Appellant
v.
HON. VINCENT D. SEGAL, Judge of the New Jersey Superior Court, Chancery Division; ROSEANN BAEHR

On Appeal from the United States District Court for the District of New Jersey
(D.C. Civ. No. 92-04437)
District Judge: Hon. Joseph Irenas

Submitted Under Third Circuit Rule 12(6)
June 30, 1993

Before: SLOVITER, Chief Judge
HUTCHINSON and ROTH, Circuit Judges

JUDGMENT ORDER

Date of Entry: July 8, 1993

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed. Costs taxed against appellant.

By the Court,

Chief Judge

Attest:

P. Douglas Sisk, Clerk

Dated: JUL 08 1993

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN D. AURITI, PRO SE, Plaintiff
v.
HONORABLE VINCENT D. SEGAL
and ROSEANN BAEHR, Defendants

HONORABLE JOSEPH E. IRENAS

93-CV-4556 (JEI)

OPINION AND ORDER DISMISSING COMPLAINT

Date of Entry: October 20, 1993

APPEARANCES:
John D. Auriti, Pro Se
230 Oakland Ave.
Apt. #43
Audubon, NJ 08106

IRENAS, District Judge:

On October 26, 1992, plaintiff filed a previous action under 42 U.S.C. Section 1983 seeking to modify a New Jersey Superior Court decision of Judge Vincent Segal in which he denied plaintiff's claim for alimony from his former wife who, along with Judge Segal, was named defendant.

Plaintiff argued that by failing to follow certain precedents Judge Segal's opinion denied him due process of law.

This court dismissed plaintiff's action as frivolous, Auriti v. Segal et al., No. 92-4437 (D.N.J. November 2, 1992), and shortly thereafter denied a motion for reconsideration under local Rule 12(I). Auriti v. Segal, et al., No. 92-4437 (D.N.J. November 11, 1992). On appeal to the Third Circuit the dismissal was affirmed. Auriti v. Segal, et al., No. 93-5019, 1993 U.S. App. LEXIS 25666 (3d Cir. July 8, 1993).

On October 6, 1993, plaintiff has filed another complaint which is word for word (except for one inconsequential paragraph) identical

to the amended complaint which was previously dismissed. Since both the District Court and the Court of Appeals have determined that this action is without merit, it will once again be dismissed. Any dispute which plaintiff has with his former wife must be resolved in the New Jersey state courts.

For the reasons set forth above,

IT IS on this 19th day of October, 1993,

ORDERED that the within complaint is hereby DISMISSED.

JOSEPH E. IRENAS

U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN D. AURITI, PRO SE, Plaintiff
v.
HONORABLE VINCENT D. SEGAL
and ROSEANN BAEHR, Defendants

HONORABLE JOSEPH E. IRENAS

93-CV-4556 (JEI)

AMENDED OPINION AND ORDER DISMISSING COMPLAINT

APPEARANCES:
Jonn D. Auriti, Pro Se
230 Oakland Ave.
Apt. #43
Audubon, NJ 08106

Date of Entry: November 1, 1993

IRENAS, District Judge:

On October 26, 1992, plaintiff filed an action under 42 U.S.C. Section 1983 seeking to modify a New Jersey Superior Court decision of Judge Vincent Segal in which he denied plaintiff's claim for alimony from his former wife who, along with Judge

Segal, was named defendant. Plaintiff argued that by failing to follow certain precedents Judge Segal's opinion denied him due process of law.

This court dismissed plaintiff's action as frivolous, Auriti v. Segal, et al., No. 92-4437 (D.N.J. November 2, 1992), and shortly thereafter denied a motion for reconsideration[1] under local Rule 12(I). Auriti v. Segal, et al., No. 92-4437 (D.N.J. November 11, 1992). Our decision to dismiss was predicated on basic tenets of comity an recognized that federal courts had no power to vacate or otherwise enter orders in a state proceeding. On appeal to the Third Circuit the dismissal was affirmed. Auriti v. Segal, et al., No. 93-5019,

1993 U.S. App. LEXIS 25666 (3d Cir. July 8, 1993).

On October 6, 1993, plaintiff filed a second complaint, which replicates the proposed amended complaint he submitted with his motion for reconsideration. This second complaint is factually and legally indistinct from the plaintiff's original complaint. Since both the District Court and the Court of Appeals have determined that this action is without merit, it will once again be dismissed. Any dispute which plaintiff has with his former wife must be resolved in the New Jersey state courts.

For the reasons set forth above,

IT IS on this 29th day of October, 1993,

ORDERED that the within complaint is hereby DISMISSED.

JOSPEH E. IRENAS

U.S.D.J.

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[1]The motion for reconsideration comprised requests (1) to reverse the original opinion dismissing the action as frivolous, and (2) to vacate the original opinion and grant the plaintiff leave to file an amended complaint.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 93-5709

JOHN D. AURITI, Appellant
v.
HONORABLE VINCENT D. SEGAL;
ROSEANN BAEHR, formerly ROSEANN AURITI,
a/k/a ROSEANN CORNWELL

Appeal from the United States District
Court for the District of New Jersey
D.C. Civil Action No. 93-cv-04556
(District Judge:
Honorable Joseph E. Irenas)

Submitted Under 3rd Circuit LAR 34.1(a)
March 18, 1994

Before: BECKER, SCIRICA, and ALITO,
Circuit Judges.

JUDGMENT ORDER

Date of Entry: March 25, 1994

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the Orders of the district court of October 19, 1993 and October 29, 1993 be and the same are hereby AFFIRMED.

Costs taxed against appellant.

BY THE COURT:

Circuit Judge

Attest:

P. Douglas Sisk, Clerk

DATED: March 25, 1994

28 U.S.C., Section 1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

42 U.S.C., Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C., Section 1343

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.